

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRAXTON CHEYANNE GARCIA,

Case No. 3:21-cv-00220-MMD-WGC

14

Petitioner,

ORDER

WASHOE COUNTY NEVADA, *et al.*,

Respondents.

11 This habeas matter is before the Court on *pro se* Petitioner Braxton Cheyenne
12 Garcia's Application to Proceed *In Forma Pauperis* (ECF No. 1) and for an initial review
13 under the Rules Governing Section 2254 Cases.¹ For the reasons discussed below, the
14 Court orders Garcia to show cause in writing within 30 days as to why this action should
15 not be dismissed without prejudice for failure to exhaust his claims in state court.²

16 Garcia challenges a conviction and sentence imposed by the Second Judicial
17 District Court for Washoe County (“state court”).³ Garcia’s petition indicates that he pled
18 guilty to one count of child abuse with intent to cause substantial bodily harm. (ECF No.
19 1-1 at 1.) Garcia represents that his judgment of conviction was entered on April 22, 2021
20 and that he was sentenced to 30 to 160 months. (*Id.*) Garcia further represents that he did
21 not file an appeal to the Nevada appellate courts regarding his conviction and has not

¹All references to a “Habeas Rule” or the “Habeas Rules” in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

²Garcia has also filed a motion for appointment of counsel, which the Court defers consideration of until after he has responded to the order to show cause.

³The Court takes judicial notice of the online docket records of the Second Judicial District Court and Nevada appellate courts, which may be accessed by the public online at: <http://www.washoecourts.com> and www.caseinfo.nvsupremecourt.us/public/caseSearch.do

1 previously filed any petitions, applications, or motions with respect to this judgment in any
2 state or federal court. (*Id.*)

3 Under Habeas Rule 4, the assigned judge must examine the habeas petition and
4 order a response unless it “plainly appears” that the petitioner is not entitled to relief.
5 See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule requires courts
6 to screen and dismiss petitions that are patently frivolous, vague, conclusory, palpably
7 incredible, false, or plagued by procedural defects. See *Boyd v. Thompson*, 147 F.3d
8 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990)
9 (collecting cases).

10 Here, it appears likely that Garcia’s petition is wholly unexhausted in state court
11 and is subject to dismissal without prejudice. A state prisoner first must exhaust state court
12 remedies on a habeas claim before presenting that claim to the federal courts. 28 U.S.C.
13 § 2254(b)(1)(A). This exhaustion requirement ensures that the state courts, as a matter of
14 comity, will have the first opportunity to address and correct alleged violations of federal
15 constitutional guarantees. See *Coleman v. Thompson*, 501 U.S. 722, 730-31 (1991). “A
16 petitioner has exhausted his federal claims when he has fully and fairly presented them to
17 the state courts.” *Woods v. Sinclair*, 764 F.3d 1109, 1129 (9th Cir. 2014) (citing *O’Sullivan*
18 *v. Boerckel*, 526 U.S. 838, 844-45 (1999) (“Section 2254(c) requires only that state
19 prisoners give state courts a *fair* opportunity to act on their claims.”)). To satisfy
20 the exhaustion requirement, a claim must have been raised through one complete round
21 of either direct appeal or collateral proceedings to the highest state court level of review
22 available. See *O’Sullivan*, 526 U.S. at 844-45; *Peterson v. Lampert*, 319 F.3d 1153, 1156
23 (9th Cir. 2003) (en banc); *Vang v. Nevada*, 329 F.3d 1069, 1075 (9th Cir. 2003). A properly
24 exhausted claim “must include reference to a specific federal constitutional guarantee, as
25 well as a statement of the facts that entitle the petitioner to relief.” *Woods*, 764
26 F.3d at 1129 (quoting *Gray v. Netherland*, 518 U.S. 152, 162-63 (1996)); *Castillo v.*
27 *McFadden*, 399 F.3d 993, 999 (9th Cir. 2005) (fair presentation requires both the operative
28 facts and federal legal theory upon which a claim is based).

1 Petitioner was sentenced by the state court on April 2021, less than three months
2 ago. The petition concedes that he has not filed a direct appeal or initiated a state habeas
3 action. Thus, it is virtually certain that he has not exhausted any federal constitutional claim
4 relative to his judgment of conviction, and that this federal habeas corpus action is
5 premature. Accordingly, Petitioner will be required to show cause why this action should
6 not be dismissed because of his failure to exhaust any claim in state court.

7 It is therefore ordered that Petitioner must file within 45 days of the date of this
8 order, a "Response to Order to Show Cause," in writing, showing cause why this action
9 should not be dismissed without prejudice based on his failure to exhaust his claims in
10 Nevada Courts. Petitioner's response must be factually detailed, and, where possible,
11 supported by exhibits.

12 If Petitioner fails to timely and fully comply with this order, the Court will dismiss this
13 action without prejudice and without further advance notice.

14 DATED THIS 12th Day of July 2021.

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18 MIRANDA M. DU
19 CHIEF UNITED STATES DISTRICT JUDGE
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